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RESOLUTION NO. _____

A RESOLUTION ADOPTING A POLICY REGARDING THE PROVISION OF WATER AND SEWER SERVICES TO PROPOSED DEVELOPMENTS THAT INCLUDE HOUSING UNITS AFFORDABLE TO LOWER INCOME HOUSEHOLDS

WHEREAS, the City of Milpitas ("City") is committed to the fair and equitable provision of water and sewer services to persons and entities within its jurisdiction, in conformity with state law and the Milpitas Municipal Code; and

WHEREAS, Government Code Section 65589.7 requires the City, as a provider of water and sewer services, to adopt a written policy (i) granting priority for the provision of public water and sewer services to proposed housing developments that include housing units affordable to lower income households and (ii) barring the denial or the conditional approval of an application for services, or reducing the amount of the services applied for, merely because a proposed development includes housing units affordable to lower income households, except in limited circumstances.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas as follows:

1. That the "City of Milpitas Policy Regarding the Provision of Service to Residential Developments that Include Housing Units Affordable to Lower Income Households," a copy of which is attached hereto, is hereby approved and adopted, effective July 1, 2006.
2. That the City's policy shall govern the manner in which water and sewer services are provided to proposed residential housing developments within the City's jurisdiction that address the needs of lower income households.
3. That every five years after the adoption of this policy, the City shall prepare a report for acceptance by the City Council identifying such things as the available water distribution, treatment and storage capacity, sewer collection, treatment and disposal capacity, and anticipated demand for water and sewer services from lower income households, the necessary steps needed to address capacity shortfalls, and any necessary changes to the policy adopted by this resolution.
4. That each portion of this resolution is severable. Should any portion of this resolution be adjudged to be invalid and unenforceable by a body of competent jurisdiction, then the remaining resolution portions shall be and continue in full force and effect.

PASSED AND ADOPTED THIS ____ day of _____, 2006 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

**CITY OF MILPITAS POLICY REGARDING THE PROVISION OF SERVICE TO
RESIDENTIAL DEVELOPMENTS THAT INCLUDE HOUSING UNITS
AFFORDABLE TO LOWER INCOME HOUSEHOLDS**

1. *Policy Background:* Pursuant to Government Code Section 65589.7, the City, as a provider of water and sewer services, is required to adopt a written policy (i) granting priority for the provision of public water and sewer services to proposed housing developments that include housing units affordable to lower income households and (ii) barring the denial or the conditional approval of an application for services, or reducing the amount of the services applied for, merely because a proposed development includes housing units affordable to lower income households, except in limited circumstances. The Policy set forth herein conforms with this mandate.
2. *General Service Policy:* To the extent practical, the City shall provide or allow to be provided water distribution, treatment and storage facilities and wastewater collection, treatment, and disposal facilities that:
 - (a) have sufficient capacity to accommodate the demand from land uses approved in the City of Milpitas General Plan, and
 - (b) are located so as to serve all existing or approved development within the City and all customers contracting with the City for service, provided service is feasible.
3. *Provision of Service During Times of Excess Capacity:* In times of excess water distribution, treatment and storage capacity and/or excess wastewater collection, treatment and disposal capacity, the City shall review and provide, or permit the provision of, public water and sewer service to residential housing developments on an income neutral basis. Upon an applicant's payment of applicable fees or the execution of a contract to that effect with the City, the City shall permit public water services and public sewer services to eligible customers in the order of an application's submission, subject to the general restrictions set forth herein and the income neutral requirements of the City Municipal Code regarding the provision of sewer and water services.
4. *Provision of Service During Times of Limited Capacity or Ability to Provide Service:* In the event of service limitations due to capacity or regulatory constraints, service priority shall be given to planned developments that include housing units affordable to lower income households in accordance with Government Code Section 65589.7 (SB 1087, 2005) and the limitations set herein.
5. *Water Service Approval and Application Review:* The City shall not deny or condition the approval of an application for water services to, or reduce the amount of services applied for by, a

- (a) available water distribution, treatment and storage capacity and available sewer collection, treatment and disposal capacity;
- (b) the anticipated demand for water and wastewater utility service by planned housing units affordable to lower income households;
- (c) any public or private action steps necessary to accommodate such demand if adequate capacity is unavailable; and
- (d) any changes to these policies or procedures necessary for implementing this service requirement.

Preparation of this report shall take into account information available in the General Plan and pertinent plans and documents.

8. *Definitions:*

“Proposed developments that include housing units affordable to lower income households” means that dwelling units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or an affordable rent, as defined in Section 50053 of the Health and Safety Code.

“Water or sewer services” means supplying service through a pipe or other constructed conveyance for a residential purpose, and does not include the sale of water for human consumption by a water supplier to another water supplier for resale.

“Water service” provided by the City applies only to water supplied from public water systems subject to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.